

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DANIEL H. GULLEDGE
Claimant

VS.

PHILLIPS & JORDAN, INC.
Respondent,
Self-Insured

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Docket No. 251,066

ORDER

Respondent appealed the November 9, 2000 Preliminary Decision entered by Administrative Law Judge Robert H. Foerschler.

ISSUES

This is a claim for a November 15, 1999 accident and alleged resulting injuries to the neck, back, and right leg. Respondent admits that claimant injured his neck in the accident but denies that he injured his low back. After conducting a preliminary hearing on November 2, 2000, Judge Foerschler granted claimant's request for medical benefits for the low back.

Respondent contends that Judge Foerschler erred. It contends that claimant did not prove that he injured his low back in the November 15, 1999 accident but that he probably injured his low back while working for other employers after leaving respondent's employment. Therefore, respondent requests that the Appeals Board reverse the Preliminary Decision.

Conversely, claimant requests the Board to affirm the Preliminary Decision. Claimant contends that he has had right leg symptoms since the November 1999 accident which proves that he injured his low back and herniated a disc at that time. Claimant also argues that Dr. Robert J. Takacs' medical opinion, which directly links claimant's herniated disc to the November 1999 accident, is uncontroverted.

The only issue before the Board on this review is whether claimant's present low back problems were caused by the November 15, 1999 accident or whether those problems were caused by a later incident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Appeals Board finds:

1. The Preliminary Decision should be affirmed.
2. On November 15, 1999, claimant was operating a road scraper with a defective seat when he hit a bump and was bounced up into the air. Claimant landed back onto the seat and felt his back pop. The accident arose out of and in the course of claimant's employment with respondent.
3. The Appeals Board affirms Judge Foerschler's finding that it is more probably true than not that claimant injured his low back in the November 15, 1999 accident. In making that finding, the Board notes that Dr. Roger A. Thomas' records from December 7, 1999, indicate that on that date claimant complained of increasing edema in his right lower extremity for two weeks and that he was beginning to feel it in the upper thigh and knee areas. That entry reads:

. . . He [claimant] also states that for the last two weeks he has noticed increasing edema in the right lower extremity. He notices it most prominently from the mid tibia to the toes but also states that he is beginning to feel it in the upper thigh and knee area. . . .

Additionally, Dr. Terrence Pratt's notes from March 28, 2000, indicate that claimant reported having low back discomfort for two months along with right lower extremity symptoms. Dr. Pratt writes:

. . . He [claimant] reports over the past two months low back discomfort with involvement of the right lower extremity. . . .

Further, Dr. Robert J. Takacs, the surgeon who operated on claimant's low back in August 2000 and performed a disc excision on the right at L5-S1, believes that claimant's herniated disc was caused by the November 15, 1999 accident. In an August 29, 2000 letter, Dr. Takacs states, in part:

I have recently had the occasion to treat Mr. Gulledge for a large disc herniation which needed surgical intervention. He is doing well postoperatively, but he has had problems with his right leg since an injury on the job in November. He has had problems that have come and gone since that time and much worse recently, in fact, to the point that it required hospitalization and now surgical intervention. He denies ever having problems with the leg prior to the injury in November and I feel therefore, most likely, the November job injury caused his disc herniation.

Finally, although it is true that claimant worked for other employers between the date of the November 1999 accident and the August 2000 surgery, claimant had ongoing lower extremity symptoms during that period and there is nothing in the record that strongly suggests that claimant sustained another accident.

4. For preliminary hearing purposes, claimant has proven that his present low back problems were caused by his November 15, 1999 accident. Therefore, claimant's request for benefits should be granted.

5. As provided by the Workers Compensation Act, preliminary hearing findings are not binding but subject to modification upon a full hearing of the claim.¹

WHEREFORE, the Appeals Board affirms the November 9, 2000 Preliminary Decision entered by Judge Foerschler.

IT IS SO ORDERED.

Dated this ____ day of December 2000.

BOARD MEMBER

c: Robert W. Harris, Kansas City, KS
Michael H. Stang, Overland Park, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director

¹ K.S.A. 1999 Supp. 44-534a(a)(2).